

REMARKS

Claims 1-12 and 14-45 have been amended. Claims 1-45 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Claim Numbering:

The claim numbering has been corrected. Various claims have been amended, as needed, to correct dependencies due to the correction of their numbering.

Provisional Double Patenting Rejection:

The Examiner provisionally rejected claims 1-5, 19, 24-27 and 29-31 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 15-17, 22-26, 38-40, 44-49, 43-44, 59-62, 68-69, 73-75 and 79-91 of co-pending Application No. 10/783,738. The instant application and the 10/783,738 application are both pending patent applications, not issued patents. If and/or when this rejection becomes non-provisional, Applicants will consider filing a terminal disclaimer or present reasons traversing the rejection.

Section 101 Rejection:

The Examiner rejected claims 17 and 28-40 under 35 U.S.C. § 101 as being directed non-statutory subject matter. Specifically, the Examiner submits that claims 17, 28, 29, and 36 are not limited to statutory embodiments in view of Applicants' specification (p. 40, paragraph [1140]). These claims have been amended to recite a machine-readable storage medium, as suggested by the Examiner. Examples of such storage media are described in Applicants' specification, and clearly encompass tangible, physical articles or objects (see, e.g., the cited paragraph and paragraph [1141]). Therefore, Applicants respectfully request removal of the rejection of claims 17 and 28-40 under 35 U.S.C. § 101.

Section 112, Second Paragraph, Rejection:

The Examiner rejected claims 1-45 under 35 U.S.C. § 112, second paragraph, as indefinite. Remarks addressing specific limitations, terms and/or groups of claims are addressed below.

Applicants note that the Examiner listed claims 1-45 in the rejection, but did not include any remarks regarding the rejection of claims 4, 13-14, 16-17, 19-20, 26-31, 33, 36, 40-41, and 43 in the Office Action. **Therefore, the rejection of these claims is improper and the removal thereof is respectfully requested.**

The Examiner submits that the following terms lack antecedent basis: the given interval (in claim 10), the period of time (in claim 22), and the set of attributes (in claim 45). The dependency of claims 9, 21, and 45 has been amended to overcome the rejection of claims 10, 22, and 45.

The Examiner submits that the claim language in many of the claims is not clearly understood. Many of the terms that the Examiner does not understand are actually well-understood terms of art and are also clearly described in Applicants' specification. For example, the terms "computations" (as in claim 2), and "isolate" (as in claim 7) are described in the context of the claimed invention on at least p. 5 of Applicants' specification. These are also extremely well-understood terms of art. Applicants respectfully remind the Examiner that if one skilled in the art would understand the bounds of the claim when read in light of the specification, then the claim satisfies section 112 paragraph 2. *Miles Labs., Inc. v. Shandon, Inc.*, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993). "We have not insisted that claims be plain on their face in order to avoid condemnation for indefiniteness; rather, what we have asked is that the claims be amenable to construction, however difficult that task may be." *Exxon Research & Eng'g Co. v. U.S.*, 60 USPQ2d 1272, 1276 (Fed. Cir. 2001). "If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over

which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.” *Id.* Applicants assert that these terms would be clearly understood by one of ordinary skill in the art having benefit of Applicants’ disclosure.

The Examiner submits that it is uncertain whether the term “threshold” in claim 1 is the same as the “threshold rate” of claim 1. This claim has been amended to recite a threshold rate. In addition, claim 11 has been amended to recite “the threshold rate,” therefore clearly referring to this same threshold rate.

Further regarding claim 1, the Examiner submits that it is unclear what is meant by “a threshold rate.” Again, Applicants assert that this term would be clearly understood by one of ordinary skill in the art having benefit of Applicants’ disclosure. This term is described by way of example and usage in at least paragraphs [1007]-[1008] and [1126]-[1135].

Further regarding claim 2, the Examiner submits that it is unclear what is meant by “state independent” and whether “other computations” reside within the same first isolate. Claim 2 has been amended for clarification. In addition, the plain language of claim 2 requires that “other computations” are computations other than the recited set of one or more computations of the first isolate. Therefore, they clearly do not reside in the first isolate. Claim 24 includes similar limitations and has been similarly amended. Applicants assert that this would be easily understood by one of ordinary skill in the art having benefit of Applicants’ disclosure, which clearly describes this property of isolates.

Regarding claim 3, the Examiner submits that the use of the word “characterized” is inappropriate since 35 U.S.C. § 112, second paragraph, “requires the claim to particularly point out and distinctly claim the invention, not merely its characteristics”. Applicants assert that the term “characterized” is not used to characterize the invention, as suggested by the Examiner, but in the recitation of a distinct limitation of the claimed invention, i.e., that in the method of claim 1, a set of common attributes is used to

characterize resources. Claim 3, as amended, recites, “wherein the first isolate monitors and controls resource requests based at least in part on a set of common attributes used to characterize the resource.” Claim 44 includes a similar limitation. Applicants also refer to the Memorandum of January 17, 2003 from the Deputy Commissioner for Patent Examination Policy regarding advance notice of changes to MPEP § 2173.02 clarifying Office policy with respect to rejections made under 35 U.S.C. § 112, second paragraph in view of the Supreme Court holding in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831, 62 USPQ2d 1705 (2002). The Memorandum states that “some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.” The Memorandum also states that “if other modes of expression selected by applicants satisfy the statutory requirements of 35 U.S.C. § 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. § 112, second paragraph.” For the reasons stated above, Applicants assert that the Examiner’s rejection of claims 3 and 44 (among others) under 35 U.S.C. § 112, second paragraph, is not consistent with Office policy as described in the aforementioned Memorandum.

Regarding claim 5, the Examiner submits that it is unclear what is meant by “resource consuming isolates.” Applicants do not understand the Examiner’s confusion. It would be clear to one of ordinary skill in the art from the plain language of the claim that this term refers to isolates that are consumers of resources. The Examiner’s confusion about the term “resource consumer” in claim 6 is similarly perplexing. As would be easily understood from the plain language of the claim, a resource consumer is anything that consumes resources. Many examples of such resource consumers are described in Applicants specification and in others of the claims (e.g., claim 7). Applicants respectfully remind the Examiner, “Breadth of a claim is not to be equated with indefiniteness.” M.P.E.P. § 2173.04; *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971).

Regarding claim 8, the Examiner submits that it is unclear whether “previous

consume requests from the consumer” is meant for a particular resource or for all resources consumed by this particular consumer. Applicants assert that the plain language of the claim does not limit the recording to requests for a particular resource, nor does it require that the previous consume requests include those directed to multiple resources. Applicants again remind the Examiner that breadth of a claim is not to be equated with indefiniteness.

Regarding claim 9, the Examiner submits that it is unclear whether the calculation of previously consumed amount of the resource is for a particular consumer or is it the amount of resource consumed by all consumers. Applicants assert that the plain language of the claim does not limit the recording (which is what is recited in claim 9) to amounts consumed by a particular consumer, nor does it require that the recording include amounts consumed by multiple consumers. Applicants again remind the Examiner that breadth of a claim is not to be equated with indefiniteness.

Regarding claims 11, 21, and 34 the Examiner submits that it is unclear what is meant by “current usage.” Applicants do not understand the Examiner’s confusion. Applicants assert that this phrase would be easily understood in light of the ordinary meaning of the words “current” and “usage”, which are consistent with the use of this phrase in Applicants’ specification and claims. The Examiner also submits that it is unclear whether the calculated “current usage of the requested resource,” the “potential usage of the resource,” and the “previously consumed amounts of the resource” are for a particular consumer or are directed to current, potential, or previous usage by all consumers. Applicants assert that the plain language of the claims does not limit these determinations (which are what is recited in claims 11, 21, and 34) to current, potential, or previous usage by a particular consumer, nor does it require that these determinations include current, potential, or previous usage by multiple consumers. Applicants again remind the Examiner that breadth of a claim is not to be equated with indefiniteness.

Claim 38 includes limitations similar to those of claims 11, 21, and 34. For example, the Examiner submits that it is unclear what is meant by the phrase, “currently

used amount of the resource,” and further submits that it is unclear whether the “currently used amount of the resource,” the “potentially used amount of the resource” and “previously consumed amount of the resource” recited therein are determined with respect to a particular consumer or all consumers. Applicants assert that the phrase “currently used amount of the resource” would be easily understood by one of ordinary skill in the art according to the plain language recited therein. Applicants also assert that the plain language of the claim does not limit these determinations to current, potentially used, or previously used amounts of the resource by a particular consumer, nor does it require that these determinations include current, potentially used, or previously used amounts of the resource by multiple consumers. Applicants again remind the Examiner that breadth of a claim is not to be equated with indefiniteness.

Further regarding claims 11 and 21, the Examiner submits that it is unclear what is meant by “the consume request.” Applicants do not understand the Examiner’s confusion. The consume request of these claims is the same consume request recited in the independent claims from which these claims depend. The meaning of this term would be easily understood by one of ordinary skill in the art in light of the plain language of the claim. As recited in claim 1, for example, the consume request is “a consume request for a resource,” i.e., a request to consume a resource.

Regarding claim 12, the Examiner submits that it is unclear how the calculation of amount_over_threshold doesn’t take into account the given interval. Applicants assert that the calculation does take this into account, as explicitly recited in the following limitation (emphasis added): *wherein previouslyconsumedamount indicates the amount of the resource previously consumed within the given interval*. The Examiner submits that claim 39 has the same deficiency as claim 12. However, claim 38, from which claim 39 depends, explicitly recites, “wherein the previously consumed amount of the resource indicates the amount of previously consumed resource within the interval” (emphasis added).

Regarding claim 15, the Examiner submits that it is unclear what is meant by “the

rate of requests” in line 3. Applicants do not understand the Examiner’s confusion. Applicants assert that one of ordinary skill in the art having benefit of Applicants’ disclosure would recognize that the meaning of this phrase is consistent with the ordinary meaning of the words recited in claim 15, such as suggested by the Examiner, “i.e., number of request over a certain time.” Claim 15 has been amended to recite “the resource”, to more clearly refer to the resource recited in claim 1.

Claims 23, 32, 37, and 42 have been amended to clarify that the threshold recited in the independent claims from which these claims depend comprises one of the four thresholds recited therein.

Regarding claim 25, the Examiner submits that it is unclear what is meant by the term “trigger.” Applicants do not understand the Examiner’s confusion. Applicants again assert that this term would be easily understood by one of ordinary skill in the art according to its ordinary meaning, which is consistent with its use in Applicants’ specification and claims (see, e.g., paragraphs [1049] – [1056]).

Claim 35 has been amended to recite, “The storage medium of claim 34.”

Further regarding claims 1, 8, 9, 11, 18, and 21, the Examiner submits that it is not clear how some of the operations recited are performed or accomplished, how many times they are performed or accomplished, and/or what criteria is used in performing or accomplishing them (e.g., said determining in claim 1, said recording in claim 8, said recording in claim 9, said determining in claim 11, said managing in claim 18, said throttling in claim 18, said determining in claim 21, and similar limitations in other ones of the claims). Applicants assert that the specification describes each of these operations in sufficient detail to allow one of ordinary skill to understand how they may be performed or accomplished, e.g., in one or more exemplary embodiments. Applicants assert that it is not a requirement of 35 U.S.C. § 112, second paragraph, that every detail of an operation is recited within the claims, or that the claims must limit each operation recited therein to a particular embodiment of a claimed invention or a limitation thereof.

Applicants again remind the Examiner that breadth of a claim is not to be equated with indefiniteness, and assert that claims 1, 8, 9, 11, 18, and 21, meet the requirements of 35 U.S.C. § 112, second paragraph.

For at least the reasons above Applicants request removal of the rejection of claims 1-45 under 35 U.S.C. § 112, second paragraph.

Section 103(a) Rejections:

The Examiner rejected claims 1, 2, 4, 5, 14, 17-20, 24-31, 33, 36, 38, 40, 41, 43 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Suri, et al. (“Strong Mobility and Fine-Grained Resource Control in NOMADS,”) (hereinafter “Suri”), claims 6 and 7 as being unpatentable over Suri in view of Czajkowski, et al. (“Jres: A Resource Accounting Interface for Java”) (hereinafter “Czajkowski”), claim 8 as being unpatentable over Suri in view of Czajkowski and further in view of Chambliss, et al. (U.S. Patent 7,228,354) (hereinafter “Chambliss”), claims 9-12, 21-23, 32, 34, 37 and 42 as being unpatentable over Suri in view of Chambliss, claims 3 and 44 as being unpatentable over Suri in view of Courtrai, et al. (“Resource Management for Parallel Adaptive Components”) (hereinafter “Courtrai”), claims 13, 22 and 35 as being unpatentable over Suri in view of Chambliss and further in view of Belissent (WO 02/01834) (hereinafter “Belissent”), and claims 15, 16 and 39 as being unpatentable over Suri in view of Belissent. Applicants respectfully traverse these rejections for at least the following reasons.

Regarding claim 1, contrary to the Examiner’s assertion, Suri does not teach or suggest *wherein the threshold rate is specified in a resource policy installed in the resource domain, wherein the resource domain associates the resource policy for the requested resource with the plurality of resource consuming isolates bound to the resource domain*. In remarks regarding claim 5, the Examiner submits that Suri teaches a resource domain, wherein the resource domain includes an encoding that associates one or more resource policies with resource consuming isolates, citing p. 7, lines 23-26; p. 8,

lines 6-11; and p. 9, lines 9-14. While these passages describe that read and write rates of any program may be limited, that these rate limits may be enforced by a library, and that a policy manager establishes resource policies for agents, there is nothing in these passages, or elsewhere in Suri, that teaches or the resource domain of Applicants' claim. For example, there is nothing in Suri that describes a resource domain in which a policy may be installed, and which associates an installed policy with a plurality of resource consuming isolates bound to the resource domain. It appears that in the system taught by Suri, rate limits are specified for each resource. However, there is no description or suggestion of applying a resource policy to a plurality of resource consuming isolates, or that resource consuming isolates are bound to a resource domain, as required by claim 1.

Applicants respectfully remind the Examiner that to establish a *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. As discussed above, Suri fails to teach or suggest the resource domain of Applicants' claim, according to the limitations recited therein.

For at least the reasons above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested.

Independent claims 18, 29, 36, and 41 include limitations similar to the above-referenced limitation of claim 1. Therefore, the arguments presented above apply with equal force to these claims, as well.

Applicants assert that numerous ones of the dependent claims recite further distinctions over the cited art. Applicants traverse the rejection of these claims for at least the reasons given above in regard to the claims from which they depend. Since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time. Applicants reserve the right to present additional arguments.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/6000-33300/RCK.

Respectfully submitted,

/Robert C. Kowert/

Robert C. Kowert, Reg. #39,255
Attorney for Applicants

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: July 25, 2008